

DANIEL S. WEISS (State Bar No. 91930)  
LAW OFFICES OF DANIEL S. WEISS  
2020 Hurley Way, Suite 210  
Sacramento, California 95825  
Telephone: (916) 569-1610  
FAX No.: (916) 569-1612  
e-mail: dweiss@danielweisslaw.com

Attorney for Debtor

UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

In re:	)	Case No. 11-39335-C-11
	)	
ROBERT A. COOK,	)	
	)	MCN: PD - 2
	)	
	)	DATE: January 21, 2014
	)	TIME: 9:30 a.m.
Debtor.	)	DEPT: C

**DEBTOR'S MEMORANDUM OF POINTS & AUTHORITIES IN  
OPPOSITION TO MOTION FOR RELIEF FROM AUTOMATIC STAY  
FILED BY PENNYMAC HOLDINGS, LLC f/k/a PENNYMAC MORTGAGE  
INVESTMENT TRUST HOLDINGS, LLC**

NOW COMES ROBERT A. COOK, Debtor in the above-entitled matter, by his attorney, Daniel S. Weiss, and, for his Opposition to the Motion for Relief from Automatic Stay filed by secured creditor PENNYMAC HOLDINGS, LLC f/k/a PENNYMAC MORTGAGE INVESTMENT TRUST HOLDINGS, LLC ("PennyMac"), represents as follows:

**BACKGROUND OF THE MOTION**

1. This Chapter 11 case was filed on August 8, 2011.
2. In September 11, 2011, Debtor was in the process of a loan modification with JP

1 MORGAN CHASE (“Chase”), under the Home Affordable Modification Program “(HAMP”).

2 3. An offer to enter into a trial period under HAMP was sent to Debtor by Chase on or  
3 about September 5, 2011.

4 4. In acceptance of the offer, Debtor made the trial payments in a timely manner during  
5 the months of October and November 2011.

6 5. When Debtor tendered the third (and final) trial payment in December 2011 Chase  
7 refused the payment, stating as grounds for its refusal that the Debtor was in a Chapter 11  
8 proceeding.

9 6. Chase brought a motion for relief from automatic stay, based upon the Debtor’s  
10 failure to make payments on the loan.

11 7. At that time, both the first and second deeds of trust against the residence were held  
12 by Chase,  
13

14 8. On several occasions, the parties continued the hearings on the Motion for Relief  
15 from Stay, pending the outcome of a mortgage loan modification.

16 9. On July 18, 2013, Chase sent a notice to Debtor indicating that the loan  
17 modification had been denied because all of the necessary documents had not been received by  
18 Chase.  
19

20 10. Thereafter, Debtor re-submitted the application with all of the necessary documents  
21 included.  
22

23 11. By letter dated August 16, 2013, Chase notified Debtor that the servicing of his loan  
24 was being transferred to” **PennyMac Loan Services, LLC**”, effective as of September 3, 2013.  
25 This notice did not mention “PENNYMAC HOLDINGS, LLC f/k/a PENNYMAC MORTGAGE  
26  
27  
28

1 INVESTMENT TRUST HOLDINGS, LLC” as the owner or assignee of the loan. A copy of the  
2 notice is filed as Exhibit A to the Declaration of Robert A. Cook, and incorporated by reference  
3 herein.

4  
5 1. Notwithstanding the notice of transfer, on September 24, 2013, Debtor received a  
6 letter from Chase, a copy of which is filed as Exhibit B to the Declaration of Robert A. Cook, and  
7 incorporated by reference herein. The letter indicated that Chase was still reviewing Debtor’s loan  
8 modification.

9 2. On October 31, 2013, another letter was sent by Chase to Debtor, indicating that the  
10 loan modification was still in process of evaluation. A copy of the letter is filed as Exhibit C to the  
11 Declaration of Robert A. Cook, and is incorporated by reference herein.

12 3. Debtor thereafter has received no communications from Chase.

13  
14 4. Movant, now claims to be the holder of the first deed of trust against the residence of  
15 the Debtor situated at 6416 Orange Hill Lane, Carmichael, California.

16 5. The identity of the Movant is not the same as described in the notice dated August  
17 16, 2013, and that notice did not state that the loan was being transferred or assigned to PennyMac,  
18 it only referenced a change of loan servicer.

19  
20 6. Debtor was not aware that he was expected or required to submit a new loan  
21 modification application to PennyMac, and did not do so, relying on the continuing  
22 communications he was receiving from Chase.

23 **CONCLUSION – RELIEF SOUGHT**

24 For the foregoing reasons, Debtor respectfully urges the Court to deny the Motion for  
25 Relief from Automatic Stay, without prejudice, granting Debtor the opportunity to submit a new  
26  
27  
28

1 loan modification to the Movant, if in fact the Movant is the proper party, or, in the alternative, to  
2 continue the hearing on the motion until such time as a new application has been finally acted  
3 upon by the secured party.  
4

5 Debtor further asks for such further and other relief as the Court deems just and proper.

6 Respectfully submitted,

7 LAW OFFICES OF DANIEL S. WEISS  
8 Attorneys for Debtor  
9 ROBERT A. COOK

10 Dated: January 8, 2014.

11 By: /s/ Daniel S. Weiss  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28